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No. 06-1204

FILED
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SUPREME COURT, U.S.

In The

Supreme Court of the United States

REPUBLIC OF THE PHILIPPINES, *et al.*,

Petitioners,

v.

MARIANO J. PIMENTEL, *et al.*,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

MOTION OF PHILIPPINE HUMAN RIGHTS GROUPS AS *AMICUS CURIAE* SUPPORTING RESPONDENTS FOR LEAVE TO FILE BRIEF AND BRIEF FOR PHILIPPINE HUMAN RIGHTS GROUPS AS *AMICUS CURIAE* SUPPORTING RESPONDENTS

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MOTION OF PHILIPPINE HUMAN RIGHTS GROUPS AS *AMICUS CURIAE* SUPPORTING RESPONDENTS FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE*

Pursuant to Rule 37 of the Rules of this Court, Philippine Human Rights Groups respectfully move the Court for leave to file a brief of *amicus curiae* in the above-captioned case. Counsel for Respondents have granted consent for this submission. Although consent was sought from Counsel for Petitioners, such request was declined.

This *amicus curiae* brief is submitted by nine human rights groups in the Philippines. These groups emphasize different human rights issues, but all remain deeply concerned about the protection of fundamental human rights within the Republic of the Philippines, and believe that the ability of the Victims in the case underlying the present collection effort is vitally important to the protection of human rights in the Philippines. Members of these nine groups believe that it is crucial that the Victims be allowed to collect on their judgment, especially in light of the active support the Republic of the Philippines gave to the underlying claim in the early stages of this litigation and the extensive resources that the U.S. courts have given to this adjudication.

These nine Philippine human rights groups believe that this *amicus curiae* brief will be helpful to this Honorable Court, by providing some of the context for the underlying claim brought by the Class of Human

Rights Victims; by explaining the obligation under international law of the Republic of the Philippines to compensate these Victims, as reinforced recently by the United Nations Human Rights Committee; and by providing information about the continuing human rights abuses in the Philippines at the present time. The nine Philippine human rights groups emphasize that human rights can be protected only if independent courts apply the rule of law to cases brought before them without regard to the political pressures related to the claims presented. In the present interpleader action, the Republic of the Philippines presented absolutely no evidence that it is entitled to the disputed assets, and it should not be permitted to disrupt the orderly distribution of these assets at the present time.

Given their expertise on the human rights conditions in the Philippines, these nine human rights groups would like to provide the Court with their perspective on these issues. They believe this submission will assist the Court in its deliberations. These groups are filing a joint brief to reduce multiple filings with the Court.

For these reasons, these nine Philippine human rights groups respectfully request that the Court grant this motion for leave to file.

Dated: February 26, 2008

Respectfully submitted,

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INTEREST OF *AMICUS CURIAE*

This *amicus curiae* brief is filed jointly by nine human rights groups in the Philippines.[1] These groups have a strong interest in promoting human rights principles in the Philippines and they urge this Honorable Court to reject the effort of Petitioners to have this case dismissed, because such a dismissal would be a severe setback to the cause of promoting and protecting human rights in the Philippines. The individual groups are described in the paragraphs that follow.

1. Claimants 1081. Founded in 1994, Claimants 1081 consists of several thousand individuals who suffered human rights abuses during the Marcos martial law period. It helps to coordinate these victims and to work with other human rights groups to promote justice and accountability. Its Secretary General is Ramon C. Casiple.

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[1] Pursuant to this Court's Rule 37.6, *amicus curiae* states that no person or entity other than *amicus curiae* made any monetary contribution to the preparation or submission of the brief, and also states that Professor Jon M. Van Dyke, who is one of the counsel for the Class Human Rights Victims, assisted with the preparation of this brief in part. The costs of printing are being provided by the JEHT Foundation, 120 Wooster Street, New York, N.Y. 10012.

Pursuant to Rule 37.3, *amicus curiae* states that Respondents have consented in writing to the filing of the brief; Petitioners counsel has been ask to consent, but has not given consent in writing as of the time of this filing.

The letter from Respondent granting permission is enclosed.

2. Philippine Alliance of Human Rights Advocates (PAHRA). Founded in 1986, PAHRA is an alliance of organizations, institutions and individuals committed to the promotion, protection and realization of human rights. The majority of its members are based in Metro Manila, but it has provincial and regional counterparts in other parts of the country. PAHRA was formed as a consolidation of the human rights movement in the country and as an acknowledgment of the role played by some 50 human rights organizations in the struggle against the Marcos dictatorship. Since its founding, it has served to promote cooperation and coordination among human rights groups in the country. It is currently affiliated with the International Federation of Human Rights based in Paris, France. Max de Mesa is the current Chairperson of PAHRA.

3. Task Force Detainees of the Philippines (TFD-P). TFD-P was established in 1974 by the Association of Major Religious Superiors in the Philippines. It became a pioneering human rights organizations and responded to the needs of the early Marcos martial law victims, mobilizing church workers and other volunteers to document the arbitrary detention and torture during the Marcos period. Its careful documentation and monitoring of the abuses has served as a source of evidence since the lifting of martial law. It has also conducted education programs on human rights principles. TFD-P is currently a member of the International Federation of Human Rights (FIDH), based in Paris, France. In 1990, it was

nominated for the Nobel Peace Prize and, in 2004,TFD-P was a UNESCO awardee for human rights education. Its current Executive Director is Sister Cress Lucero.

4. Families of Victims of Involuntary Disappearance (FIND). This is a nationwide mass organization of families, relatives, friends of the disappeared victims and surfaced desaparecidos advocating for human rights and social transformation. FIND has actively participated in the global effort to eradicate the practice of involuntary disappearance. It has a consultative status with the U.N. Economic and Social Council (ECOSOC) and is active in providing reports and demanding solutions to stop involuntary disappearance during regular UN sessions. This organization has continued to search and conduct forensic identification missions in mass graves and in places where victims have been buried. It is currently working for national legislation to criminalize forced disappearance. Nilda L. Sevilla is its current Chairperson.

5. BALAY Rehabilitation Center. Established in 1985, BALAY literally means "home" for the victims of human rights violations. It emphasizes the holistic approach in addressing problems of displacements and is working together with other human rights organizations and governmental bodies towards achieving peace and social transformation. This organization provides psychosocial rehabilitation services, especially in areas where displacements happen, and provides the basic psychosocial needs of

victim survivors of torture, forced disappearance, and internal displacements arising from armed conflict, forced eviction, political detention, extrajudicial killings and summary execution. Lourdes de la Cruz is its current Executive Director.

6. Amnesty International – Pilipinas. This organization was formed in 1987, after the downfall of the Marcos Regime, and is affiliated with Amnesty International based in London. AI-Pilipinas undertakes human rights education work and promotes efforts for public awareness on human rights. It has campaigned for the abolition of death penalty and for the adoption of anti-torture laws, and has put together national reports of human rights abuses in the country for international campaigns. Dr. Aurora Parong is its current Executive Director.

7. Asian Federation Against Involuntary Disappearance (AFAD). This is a federation of organizations concerned in the issue of involuntary disappearances in Asia. AFAD's objectives are: (1) to build and develop international solidarity among organizations concerned with disappearances within Asia, (2) to campaign against government measures that perpetuate governmental impunity, and (3) to work for the adoption of international instruments in the United Nation system aimed at facilitating the resolution of cases of involuntary disappearances and preventing their recurrence. AFAD has eight national organizations in seven countries covering South and

Southeast Asia. Aileen Bacalso is its current Secretary General.

8. Medical Action Group. This organization was formed in 1982 by a group of doctors, nurses, and concerned individuals who saw the need for the health sector to respond collectively and speak against the grave human rights violations perpetrated by the Marcos regime. Since then, it has widened its membership to include nurses, dentists, psychologists, health students, and health workers. This Group has rendered health services to political prisoners, urban poor, internally displaced persons, and workers. Ederlina Fernandez is its current Executive Director.

9. Alliance of Progressive Labor (APL). The Alliance of Progressive Labor is a national labor center that was established in 1996. It is committed to promoting the union movement. APL is currently affiliated with the Asian Labor Network on the IFIs (ALNI) and fourteen campaign and issue-based organizations involving local and international concerns. Joshua Mata is its current Secretary-General.

STATEMENT OF THE CASE

In this interpleader action, assets valued at the time of trial at about $35,000,000 held in a Merrill Lynch account (in the name of "Arelma," a shell corporation) were awarded, after a protracted and difficult discovery process and a bench trial, to the

members of a Class of Human Rights Victims who were killed, disappeared, or tortured at the hands of Ferdinand E. Marcos from 1972 to 1986, when he governed the Philippines in a dictatorial fashion through martial law.

Ferdinand Marcos declared martial law on September 21, 1972 and proceeded to govern by autocratic decree, issuing almost daily lists of individuals who were to be rounded up. The district court explained that "MARCOS gradually increased his own power to such an extent that there were no limits to his orders of the human rights violations suffered by plaintiffs in this action." *In re Estate of Ferdinand E. Marcos Human Rights Litigation*, 910 F.Supp. 1460, 1463 (D.Haw. 1995). The district court's listing of the various torture techniques utilized by Marcos included the following:

> 1. Beatings while blindfolded by punching, kicking and hitting with the butts of rifles;
>
> 2. The "telephone" where a detainee's ears were clapped simultaneously, producing a ringing sound in the head;
>
> 3. Insertion of bullets between the fingers of a detainee and squeezing the hand;
>
> 4. The "wet submarine", where a detainee's head was submerged in a toilet bowl full of excrement;
>
> 5. The "water cure", where a cloth was placed over the detainee's mouth and nose,

and water poured over it producing a drowning sensation;

6. The "dry submarine", where a plastic bag was placed over the detainee's head producing suffocation;

7. Use of a detainee's hands for putting out lighted cigarettes;

8. Use of flat-irons on the soles of a detainee's feet;

9. Forcing a detainee while wet and naked to sit before an air conditioner often while sitting on a block of ice;

10. Injection of a clear substance into the body a detainee believed to be truth serum;

11. Stripping, sexually molesting and raping female detainees; one male plaintiff testified he was threatened with rape;

12. Electric shock where one electrode is attached to the genitals of males or the breast of females and another electrode to some other part of the body, usually a finger, and electrical energy produced from a military field telephone is sent through the body;

13. Russian roulette; and

14. Solitary confinement while hand-cuffed or tied to a bed.

Id. Marcos fled the Philippines in March 1986, after a series of "People Power" demonstrations filled the streets of Manila to protest a rigged election, and he

went into exile in Honolulu, Hawaii. Hawaii was thus the only place where personal jurisdiction could be obtained over Marcos, and was the only location where the Victims could pursue their claims in a venue that would satisfy international requirements of due process and fairness.

The claims of the Victims were vigorously contested by Marcos's attorneys, but the jury's judgment in favor of the Victims was affirmed on appeal and is now final. *See, e.g., Hilao v. Estate of Marcos*, 25 F.3d 1467 (9th Cir. 1994), *cert. denied*, 513 U.S. 1126 (1995), and *Hilao v. Estate of Marcos,* 103 F.3d 762 (9th Cir. 1996). Since then, the members of the Class have been attempting to collect their judgment, and have active cases now in Colorado, Texas, Singapore, and the Philippines, in addition to the present interpleader action. Because of the difficulty of these collection efforts, however, no distribution of any compensation has thus far been made to any members of the Class of Victims.

The Philippine National Bank and Arelma participated actively in the present interpleader, but offered no evidence whatsoever supporting the view that the assets at issue had initially been obtained illegally or improperly by Marcos. The Republic of the Philippines and its Presidential Commission for Good Government (PCGG) made several appearances in the interpleader proceedings to assert their sovereign immunity, but presented no evidence regarding the origin of the disputed assets. The court of appeals affirmed that the Human Rights Victims should be

awarded the assets. *Merrill Lynch, Pierce, Fenner and Smith, Inc. v. ENC Corporation*, 464 F.3d 885 (9th Cir. 2006) and 467 F.3d 1205 (9th Cir. 2006). The court of appeals noted that the Class is "composed of victims of a rough and rapacious ruler, who often exercised arbitrary power." *Id.* at 890. It emphasized that "the Republic has not taken steps to compensate these persons who suffered outrage from the extra-legal acts of a man who was the president of the Republic," and explained that although the Arelma assets "will scarcely satisfy" the judgment obtained by the Human Rights Victims, *id.*, at 893, "[n]onetheless, the symbolic significance of some tangible recovery is not to be disregarded, and if the recovery is distributed pro rata among the individuals, it will have monetary meaning for the poor among them." *Id.* at 893-94. The court of appeals affirmed that the Republic and its PCGG should be able to invoke foreign sovereign immunity, but determined (based on its evaluation of the factors listed in Rule 19(b) of the Federal Rules of Civil Procedure) that the Republic and its PCGG were not indispensable parties and that it had been proper for the district court to proceed with the interpleader action in their absence.

SUMMARY OF ARGUMENT

This Honorable Court must not dismiss this case, because to do so would allow any foreign government to block every effort of victims of human rights abuses – as well as all other judgment creditors – by

simply claiming ownership of the assets at issue without any evidentiary support for the claim whatsoever. Petitioners' effort in the present case is particularly inappropriate and unacceptable because the Republic of the Philippines (in an *amicus curiae* brief it filed in 1987) encouraged the U.S. courts to provide a venue for the underlying claims of the Human Rights Victims and also because the Republic has taken no steps to provide compensation for the Human Rights Victims, despite its obligation to do so under international law. The Swiss Federal Court and the U.N. Human Rights Committee have both reminded the Philippine government of this obligation in the context of this case, but the Republic has taken no action whatsoever to assist the Victims.

The U.S. Congress has explicitly provided jurisdiction for the underlying claims of the Victims in the Alien Tort Statute, 28 U.S.C. sec. 1350, and in the Torture Victim Protection Act (TVPA), Pub.L. 102-256, 106 Stat. 73, and this Court has explained that jurisdiction exists in U.S. courts for foreign victims of torture and extrajudicial murder. *Sosa v. Alvarez-Machain,* 542 U.S. 692 (2004). Human rights abuses are continuing in the Philippines, and it appears that the Philippine government does not yet accept its responsibility to prevent such abuses. Allowing the Human Rights Victims to collect a portion of their judgment through the present interpleader action will assist in confirming the importance of human rights in the Philippines and around the world.

ARGUMENT

I. THE REPUBLIC OF THE PHILIPPINES AND ITS PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG) SHOULD NOT BE ABLE TO BLOCK THE EFFORTS OF HUMAN RIGHTS VICTIMS TO COLLECT THEIR JUDGMENT BASED ON AN UNSUBSTANTIATED ALLEGATION THAT ASSETS OF A FORMER DICTATOR BELONG TO THE REPUBLIC.

Petitioners seek the dismissal of this interpleader action based solely on their totally unsubstantiated assertion that the assets at issue were obtained illegally by Marcos, that the Republic and its Presidential Commission on Good Government (PCGG) are thereby entitled to these assets, and that the Republic and its PCGG were indispensable parties requiring dismissal of the interpleader. If this Honorable Court were to permit a foreign government to disrupt a U.S. court proceeding based solely on such unsupported allegations, it would be impossible for U.S. courts to address issues related to assets located in the United States. If the Court orders the dismissal of the current proceeding, then every government on the planet – no matter how nefarious – will have the power to block human rights victims and other judgment creditors from ever collecting their judgments. The Republic's position is particularly outrageous, because it actively encouraged the U.S. courts to provide a venue for this litigation.

In the years immediately following Marcos's exile to Hawaii, the Philippine government (under President Corazon Aquino) actively supported the class action lawsuit being pursued in Hawaii by the human rights victims. In those early years, Philippine Minister of Justice Neptali A. Gonzales prepared a letter to the Deputy Minister of Foreign Affairs, Leticia R. Shahani, explaining that Marcos was not protected by any form of immunity: "Marcos may be held liable for acts done as President during his incumbency, when such acts, like torture, inhuman treatment of detainees, etc. are clearly in violation of existing law . . . the government or its officials may not validly claim state immunity for acts committed against a private party in violation of existing law." *See Hilao v. Estate of Marcos*, 25 F.3d 1467, 1472 (9th Cir. 1994). Even more significantly, the Republic of the Philippines filed an *amicus curiae* brief in the U.S. Court of Appeals for the Ninth Circuit in 1987, after the class action case had been dismissed by the district court on act of state grounds, urging the Ninth Circuit to reverse the ruling of the district court. The Republic stated that "foreign relations with the United States will not be adversely affected if these human rights claims against Ferdinand Marcos are heard in U.S. co[illegible]ts." *Amicus Curiae* Brief Filed in 1987 by the Republic of the Philippines in *Hilao v. Marcos*, No. 15039, Respondent's Appendix (RA) 1. In the complaint filed by the Republic in 1986 in the Southern District of New York in *Republic of the Philippines v. Marcos*, the Republic specifically alleged a gross pattern of human rights abuses by Marcos, including

torture and summary execution. *See* 806 F.2d 344, 348 (2d Cir. 1986). This filing confirms the Republic's knowledge of Marcos's conduct and its willingness to have U.S. courts review this conduct.

The courts of the United States did provide a venue for the Human Rights Victims during protracted litigation, and it has also provided venues for the Republic to pursue claims to assets in the United States, which the Republic has done repeatedly. ("The Republic's right in the United States to reclaim the spoils of office from Marcos has been unquestioned since *Republic of the Philippines v. Marcos*, 862 F.2d 1355 (9th Cir. 1988) (en banc)." *Merrill Lynch,* 464 F.3d at 892.) It is thus completely disingenuous and manipulative for the Republic to argue now that U.S. courts are inappropriate venues for the determination of ownership of assets located in the United States. It is particularly unacceptable to permit the Republic to block such an action without making even so much as an offer of proof with regard to its unsubstantiated contention that it has a superior right to the assets.

II. COUNTRIES HAVE A CONTINUING OBLIGATION TO PROVIDE COMPENSATION TO HUMAN RIGHTS VICTIMS WHO HAVE SUFFERED ABUSES AT THE HANDS OF PREVIOUS GOVERNMENTS.

Petitioners' Brief refers (at 4) to the 1997 and 1998 decisions of the Swiss Federal Court regarding assets in Swiss banks, but it fails to mention the

explicit conditions listed in those decisions regarding the obligations of the Republic of the Philippines to compensate properly the victims of human rights abuses. Referring specifically to the judgment of the Human Rights Victims underlying the present interpleader, the Swiss Court stated clearly in its ruling that the Philippine Government had a responsibility to ensure that the human rights victims receive adequate compensation for their injuries, that the Philippine government had a duty to keep the Swiss Government informed about the steps it took to provide compensation to the human rights victims, and that the Swiss Government should monitor the situation to ensure that such compensation was forthcoming. *Swiss Federal Office for Police Matters v. Fondation Maler,* 1A.91/1997/odi (Swiss Federal Court (Bundesgericht, Dec. 19, 1997), Joint Appendix (JA) 64 (Ex. 47) at 84 para. 7a. The Swiss Court explained directly that the Human Rights Victims "have claims of indemnity of damages and the right of fair process in prosecuting said claims under international law," specifically citing Articles 2 and 14 of the International Covenant on Civil and Political Rights[2]

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[2] Article 2(3)(a) of the International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171, which has been ratified by 160 countries, including the United States, the Philippines, and Switzerland, says that:

> Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have *an effective remedy*, notwithstanding that the violation has

(Continued on following page)

as well as the Torture Convention[3] and Philippine law. *Id.* at 84 para. 7a. The Swiss Court said without qualification that "the Philippine government is liable for indemnification of the victims, according to international law." *Id.* at 85 para. 7a. The Swiss Federal Court went into this subject in further detail in a decision it issued nine days earlier, explaining that both the Philippines and Switzerland had duties under international law to "safeguard[] human rights" and that this duty is "incumbent upon . . . the courts as executors of the international law regime." *Federal Office for Police Matters v. Aguamina Corp.*, 1A.87/1994/err (Swiss Federal Court, Dec. 10, 1997), para. 7(c). The Swiss Court recognized that all parties to the International Covenant of Civil and Political Rights and the Torture Convention have a duty to

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been committed by persons acting in an official capacity . . .

Emphasis added.

[3] Article 14(1) of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85, says that:

> Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has *an enforceable right to fair and adequate compensation* including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation.

Emphasis added. The United States, the Philippines, and Switzerland are all contracting parties to the Torture Convention.

ensure that victims of human rights abuse have a right to establish their right to compensation through competent judicial tribunals. *Id.*, para. 7(c)(aa) and (cc).

The Swiss Court also recognized in its decision of December 10, 1997, that the Philippine judiciary has "shortcomings" and that it is "reputed to be ponderous and susceptible to corruption and political influence." *Id.*, para. 7(c)(ee). For this reason, the Swiss Court included as a condition of transferring the money to the Philippines the requirement that the Philippine government "regularly update" the Swiss authorities on the procedures established "to compensate the victims of human rights violations under the Marcos regime." *Id.*, para. 7(c)(hh). These conditions have never been fulfilled, and the Philippine Government has never provided any mechanism whatsoever to compensate those who suffered grievously during the Marcos martial law period.

The responsibility of countries to allow victims of human rights abuses to gain compensation for their suffering is well established in international law. In addition to the treaties cited by the Swiss court, this principle is also found in Article 8 of the 1948 Universal Declaration of Human Rights, U.N.G.A. Res. 217A, which says that "Everyone has the right to *an effective remedy* by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law" (emphasis added). Regional human rights treaties also emphasize the right to redress for human rights violations, and the

consistent language in all the relevant human rights treaties provides strong evidence that this responsibility is a norm of customary international law. Article 6(1) of the European Convention on Human Rights, 213 U.N.T.S. 221 (1950), says that "[i]n the determination of his civil rights ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

Similarly, Article 25(1) of the American Convention on Human Rights, 144 U.N.T.S. 123 (1969),[4] says that:

> Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

Decisions in the Inter-American system confirm that the right to an effective remedy is a continuing one that cannot be waived. The seminal case of the Inter-American Court of Human Rights is the *Velasquez*

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[4] The United States has signed, but has not yet ratified this Convention. Under Article 18(a) of the Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331, the United States is thereby "obligated to refrain from acts which would defeat the object and purpose" of the Convention.

Rodriguez Case, 28 I.L.M. 291, para. 174(d) (1989), which held that the American Convention on Human Rights imposes on each state party a "legal duty to . . . ensure the victim adequate compensation." In this decision, the Inter-American Court of Human Rights emphasized that the duty to investigate human rights abuses and compensate the victims of these abuses continues despite "changes of government" even if "the attitude of the new government may be much more respectful of those rights than that of the government in power when the violations occurred." *Id.* at 327-28 para. 184. The Republic of the Philippines has never recognized or accepted these responsibilities despite its clear obligation to do so.

On March 19, 2007, the Geneva-based U.N. Human Rights Committee, which is entrusted with interpreting and applying the International Covenant on Civil and Political Rights (in a unanimous report joined by 14 members of the Committee including the U.S. member, Professor Ruth Wedgwood) said that the Republic of the Philippines had violated Article 14(1) and Article 2(3) of the Covenant by imposing unacceptable restrictions on the efforts of the Human Rights Victims to file their U.S. judgment in the courts of the Philippines for purposes of collection, and the Committee reiterated that the Republic "is under an obligation to ensure an adequate remedy to the authors [the Human Rights Victims] including, compensation and a prompt resolution of their case on the enforcement of the US judgement in the State party [the Philippines]." *Communication No. 1320/2004,*

Human Rights Committee, CCPR/C/89/D/1390/2004 (April 3, 2007), RA-12, 23 para. 11.

The United States also has an obligation to facilitate the efforts of the Human Rights Victims in their efforts to collect their judgment, and a dismissal of the present interpleader would be inconsistent with that obligation. In the *amicus curiae* brief filed by the Solicitor General in the present case, at 32 n.6, it is contended (based on a citation to a 1990 Congressional Record) that the U.S. obligation to provide a remedy to torture victims is limited to torture occurring in the United States. It is clear, however, that Congress understood that the United States had a broader obligation, because two years later, in 1992, it enacted the Torture Victim Protection Act (TVPA), Pub.L. 102-256, 106 Stat. 73 (1992), which explicitly provides a remedy to any individual who is subjected to torture or extrajudicial killing by anyone acting "under actual or apparent authority, or color of law, *of any foreign nation.*" *Id.* sec. 2(a) (emphasis added). As this Court has explained, the TVPA "provid[es] authority that 'establish[es] an unambiguous and modern basis for' federal claims of torture and extrajudicial killing." *Sosa v. Alvarez-Machain*, 542 U.S. 692, 728 (2004) (quoting from H.R. Rep. No. 102-367, pt. 1, p. 3 (1991)). This statute, along with the Alien Tort Statute, 28 U.S.C. sec. 1350, provided the jurisdictional basis for the claims brought by the Human Rights Victims in the underlying case, and a dismissal in the present case would cause those statutes to become meaningless, because it would be

impossible for any victims to collect their judgment. This Court has explained in *Sosa v. Alvarez-Machain*, 542 U.S. 592 (2004), that the Alien Tort Statute provides jurisdiction for claims brought by aliens for human rights abuses in their home countries if those abuses violate widely-accepted international norms with definite content, *id.* at 732, such as "torture, genocide, crimes against humanity, and war crimes." *Id.* at 762 (Breyer, J., concurring). Providing a forum in U.S. courts for the adjudication of such claims "will not significantly threaten the practical harmony that comity principles seek to protect" because "universal criminal jurisdiction necessarily contemplates a significant degree of civil tort recovery as well." *Id.* at 762-63 (Breyer, J., concurring). If this Honorable Court were to dismiss the present case, the goal of providing "civil tort recovery" will have been thwarted.

III. HUMAN RIGHTS ABUSES ARE CONTINUING IN THE REPUBLIC OF THE PHILIPPINES, AS DOCUMENTED AT A HEARING HELD IN THE U.S. SENATE AND A REPORT RECENTLY ISSUED BY A U.N. RAPPORTEUR.

The recent surge in human rights abuses attributed to the Philippine military demonstrates the importance of a judicial remedy in this case. On March 14, 2007, the Subcommittee on East Asian and Pacific Affairs of the United States Senate's International Relations Committee held a Hearing on Extrajudicial

Killings in the Philippines, receiving witnesses who confirmed that human rights abuses are continuing in the Philippines. Those testifying provided reports of hundreds of extrajudicial killings during the last few years, with victims from all walks of life – farmers, fishers, workers, indigenous persons, Moro persons, journalists, human rights workers, lawyers, doctors, teachers, church officials, women, and children. It is widely thought that the Philippine military is involved in these killings and that it operates with the knowledge and support of the current Philippine government.

The testimony submitted by T. Kumar on behalf of Amnesty International contained the following summary:

> The number of attacks on leftist activists and community workers rose sharply during the last couple of years. Most of the attacks were carried out by unidentified assailants on motorcycles, at times wearing face masks, who were often described as "vigilantes" or hired killers allegedly linked to Armed Forces of the Philippines (AFP). In some cases, those attacked had reportedly been under surveillance by people linked to the security forces or had received death threats.
>
> Those most at risk include members of legal leftist political parties, including Bayan Muna (People First) and Anakpawis (Toiling Masses), other human rights and community activists, priests, church workers, and lawyers regarded by the authorities

> as sympathetic to the broader communist movement. . . .
>
> A climate of impunity shielding the perpetrators of such killings deepened as ineffective investigations failed to lead to the prosecution of those responsible. In many cases witnesses were reportedly too frightened to testify.

Amnesty International USA, Senate Hearing Testimony – Extrajudicial Killings in the Philippines – Strategies to End the violence, March 14, 2007, at <http://www.amnestyusa.org/document.php?lang=e&id=ENGUSA20070314001> (last visited Feb. 3, 2008).

About the same time, United Nations Rapporteur Philip Alston issued a report on the extrajudicial killings, implicating the Philippine military. Professor Alston visited the Philippines in February 2007 and issued a report characterizing the killings as "a grave and serious problem," stating that the Philippine military "remains in a state of almost total denial . . . of its need to respond effectively and authentically to the significant number of killings which have been convincingly attributed to them." Press Statement issued by Prof. Philip Alston, U.N. Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Feb. 21, 2007, at 3, available at <http://www.extrajudicialexecutions.org/news/Philippines_21_Feb_2007.pdf> (last visited Feb. 3, 2008). Professor Alston also stated that President Arroyo has a responsibility "to persuade the military that its reputation and effectiveness will be considerably enhanced, rather

than undermined, by acknowledging the facts and taking genuine steps to investigate." *Id.* at 3-4.

Professor Alston explained that although the exact number of killings cannot be determined, the number who have been killed "is high enough to be distressing" and that the type of killings alleged "is corrosive in many ways" because it "intimidates vast numbers of civil society actors, it sends a message of vulnerability to all but the most well connected, and it severely undermines the political discourse which is central to a resolution of the problems confronting this country." *Id.* at 2.

The continuing "denial" of the Republic's leadership and its military regarding the need to respect fundamental human rights brings into focus the importance of the present case and its role in promoting respect for human rights in the Philippines and around the world. All international human rights treaties stress the importance of providing real remedies for the victims of human rights and charge governments and their courts with carrying out this responsibility.

The members of the Class of Human Rights Victims have been seeking compensation for 22 years, since their complaint was first filed in the U.S. District Court for the District of Hawaii in 1986. For the past dozen years, they have been diligently seeking to collect the judgment awarded by a federal jury and affirmed on appeal. The court of appeals has reviewed the present interpleader and affirmed that the assets

at issue should be awarded to the Human Rights Victims. A reversal of this decision would be directly inconsistent with the treaty obligations of the United States and the Philippines, and would be a huge setback to the international efforts to enforce human rights norms and protect the fundamental human rights of every individual.

CONCLUSION

For the reasons set forth above, this Court should not order dismissal of this action and should affirm the ruling of the court of appeals.

Respectfully submitted,

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